

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Billy Lee Lisenby, Jr., a/k/a Malik Al-Shabazz,	)	C/A No.: 1:10-2609-DCN-SVH
	)	
	)	
Petitioner,	)	
	)	
vs.	)	REPORT AND RECOMMENDATION
	)	
Levern Cohen,	)	
	)	
Respondent.	)	

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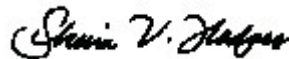
Petitioner is an inmate in the custody of the South Carolina Department of Corrections (“SCDC”), and he has filed this Petition for a Writ of Habeas Corpus. Before the court are Petitioner’s Motions to Dismiss [Entry #34, #38]. In his motions, Petitioner requests the court dismiss this action without prejudice. Plaintiff indicates that Respondent does not oppose the motions, and Respondent has not filed a response in opposition.

The court construes Petitioner’s motions as motions for voluntary dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(2), which provides in pertinent part, “[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the Petitioner’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). This rule permits a Petitioner to dismiss his case without prejudice, but requires that the Petitioner obtain court approval. *See Marex Titanic, Inc. v. Wrecked & Abandoned Vessel*, 2 F.3d 544, 546 (4th Cir. 1993). The main purpose of the rule is to

freely permit voluntary dismissals while safeguarding the non-movant from prejudice. *Davis v. USX Corp.*, 819 F.2d 1270, 1273 (4th Cir. 1987).

Generally, a petitioner's motion for voluntary dismissal without prejudice under Rule 41(a)(2) should not be denied unless the respondent will suffer prejudice. *See Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986). There is no indication here that Respondent would be prejudiced by the dismissal, and Respondent has not opposed the motions. Therefore, because no evidence of prejudice has been presented and in light of Respondents' lack of opposition, the undersigned recommends Petitioner's motions be granted [Entry #34, #38] and this case be dismissed without prejudice.

IT IS SO RECOMMENDED.



May 31, 2011  
Florence, South Carolina

Shiva V. Hodges  
United States Magistrate Judge

**The parties are directed to note the important information in the attached  
“Notice of Right to File Objections to Report and Recommendation.”**